

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

KSTP-TV

Complainant,

vs.

Minnesota Department of Corrections and
Minnesota Department of Public Safety,
Bureau of Criminal Apprehension,

Respondents.

**ORDER DENYING PETITION
FOR RECONSIDERATION**

On December 15, 2010, KSTP-TV (KSTP) filed a Complaint with the Office of Administrative Hearings alleging that the Minnesota Department of Corrections (DOC) and the Minnesota Department of Public Safety's Bureau of Criminal Apprehension (BCA) violated Minn. Stat. § 13.03, subds. 1 and 3, when they denied KSTP's requests for data regarding whether DNA had been collected from certain convicted felons. Pursuant to Minn. Stat. § 13.085, subd. 3(a), the Chief Administrative Law Judge assigned the matter to Administrative Law Judge Barbara J. Neilson on December 16, 2010.

After reviewing the Complaint and supporting materials, and the DOC's and BCA's responses to the Complaint, the Administrative Law Judge determined that the Complaint did not present sufficient facts to establish probable cause to believe that a violation of Chapter 13 occurred. Accordingly, in an Order dated February 11, 2011, the Administrative Law Judge dismissed the Complaint.

On February 22, 2011, KSTP filed a Petition for Reconsideration of the Administrative Law Judge's Order of Dismissal with the Chief Administrative Law Judge, pursuant to Minn. Stat. § 13.085, subd. 3(c).

Mark R. Anfinson, Attorney at Law, Lake Calhoun Professional Building, 3109 Hennepin Avenue South, Minneapolis, MN 55408, appeared on behalf of the Complainant, KSTP-TV. Brent D. Wartner, Director, Policy & Legal Services, and Krista Guinn Fink, Associate Legal Counsel, Minnesota Department of Corrections, 1450 Energy Park Drive, Suite 200, St. Paul, MN 55108, appeared on behalf of the Department of Corrections. E. Joseph Newton, General Counsel, Minnesota Department of Public Safety, 445 Minnesota Street, Suite 1000, Saint Paul, MN 55101-5000, appeared on behalf of the Minnesota Department of Public Safety.

Based on the record herein, and for the reasons stated in the following Memorandum, the Chief Administrative Law Judge makes the following:

ORDER

IT IS HEREBY ORDERED that Complainant's Petition for Reconsideration is **DENIED**.

Dated: March 3, 2011

s/Raymond R. Krause

RAYMOND R. KRAUSE
Chief Administrative Law Judge

NOTICE OF RECONSIDERATION AND APPEAL RIGHTS

This order is the final decision in this matter under Minn. Stat. § 13.085, subd. 5(d), and a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63 to 14.69.

MEMORANDUM

Background

On February 11, 2011, the Administrative Law Judge issued an Order finding no probable cause to believe that either the DOC or the BCA violated the requirements of Minn. Stat. § 13.03, subds. 1 and 3. On February 22, 2011, complainant KSTP requested reconsideration of the February 11, 2011 Order. Minn. Stat. § 13.085, subd. 3(c), provides that the Chief Administrative Law Judge must review a petition for reconsideration within ten business days to determine whether the assigned administrative law judge made a "clear material error."

Minn. Stat. § 13.03, subd. 1, creates a basic presumption that government data is public, unless classified otherwise by statute. Each government entity's responsible authority is required to "keep records containing government data in such an arrangement and condition as to make them easily accessible for convenient use."¹

¹ Minn. Stat. § 13.03, subd. 1 (2010).

Minn. Stat. § 13.03, subd. 3, requires government agencies to provide access to public data or, if the data is not public, to inform the person making the request of the basis for the denial of access, including the specific statutory cite for the denial.²

KSTP-TV alleged that the DOC and BCA violated the Minnesota Government Data Practices Act by not disclosing limited information obtained under various statutes requiring public agencies to collect biological specimens from individuals convicted of certain crimes and retain DNA analyses performed regarding those specimens.³ Specifically, KSTP-TV contended that (1) the BCA improperly refused to disclose the names of all individuals on which the BCA maintains DNA information; and (2) the DOC improperly refused to disclose whether or not biological specimens have been obtained from individuals on probation in the 37 counties in which the DOC provides supervision or state custody.⁴

Claim Against the DOC

The Administrative Law Judge found that the facts presented to her failed to establish a reasonable belief that the Respondents committed a violation of the applicable law. She concluded, based upon the information provided by the DOC, that the DOC “does not maintain or have access to a state-wide record that would allow it to identify offenders who do not have a DNA sample on file with the BCA” and dismissed the Complaint as to the DOC. In its Petition for Reconsideration, KSTP did not address this aspect of the Administrative Law Judge’s Order. The Chief Administrative Law Judge finds that the Administrative Law Judge’s conclusions regarding the complaint against the DOC were not based on a clear material error and must be affirmed.

Claim Against the BCA

The Petition for Reconsideration focused on the Administrative Law Judge’s determination that Minn. Stat. § 299C.155, subds. 3 and 4, classify all information in the BCA centralized database as private, including the names of the offenders whose DNA is included in the database. Based on this determination, the Administrative Law Judge dismissed the complaint against the BCA for failure to present sufficient facts to believe that the BCA violated Chapter 13.

² Minn. Stat. § 13.03, subd. 3(f) (2010).

³ See, e.g., Minn. Stat. § 299C.105 and 299C.155 (requiring that sheriffs, peace officers, and community corrections agencies collect biological specimens from persons convicted of certain crimes and forward them to the Bureau of Criminal Apprehension (BCA) and that the BCA perform DNA analysis and establish a centralized system to cross-reference data obtained from DNA analysis); Minn. Stat. § 590.10 (requiring that biological evidence used to obtain a conviction be retained by all appropriate governmental entities until expiration of sentence); and Minn. Stat. § 609.117 (requiring that courts order offenders to provide a biological specimen at sentencing for a felony offense and corrections authorities obtain a specimen before an offender is released from incarceration or when an offender is transferred to Minnesota from another state, and establishing a process by which specimens may be obtained from offenders who are no longer under supervision but should have provided a specimen following a conviction or adjudication for one of the designated offenses).

⁴ Attachment to Complaint at 1-2.

Section 299C.155, subd. 3, categorizes the data in the BCA's centralized database as private data. In addition, the Administrative Law Judge examined language in the same subdivision which specifies that "[t]he bureau's centralized system may only be accessed by authorized law enforcement personnel and used solely for law enforcement identification purposes." The Administrative Law Judge noted that this language creates limitations "even broader than those typically associated with a 'private data on individuals' classification." Furthermore, the Administrative Law Judge noted the restrictions in section 299C.155, subd. 4, which specifies that "[t]he results of the bureau's DNA analysis and related records are private data on individuals, as that term is defined in section 13.02, and may only be used for law enforcement identification purposes."⁵ The language of the statute, the Administrative Law Judge concluded, clearly prohibits the release of the names of the offenders on whom DNA is maintained as part of the BCA's centralized DNA database.

KSTP Arguments

KSTP argued in its Petition for Reconsideration that section 299C.155 only restricts access to the scientific results of the DNA analyses, not to the names of the individuals who are the subjects of the analyses. But the analyses are meaningless without the names of the subjects, which are an essential part of the database. There is no statutory language which supports pulling out the data element containing the names of the offenders and treating that element as public data. KSTP additionally relied on the language in subdivision 4 stating the "results of the bureau's DNA analysis and related records are private data on individuals," arguing that the names of the offenders are not the "results of the bureau's DNA analysis." But this argument ignores the second part of the quoted language. The second part states that "related records" are also private data. There is no logical basis to conclude that the names of the offenders are not "related records" to the DNA analysis.

KSTP asserted that the public interest in knowing whether law enforcement is doing its job in collecting DNA samples should be sufficient reason to allow it access to the data it seeks. That is not a decision for this tribunal. It is a decision for the legislature, which may have other means of monitoring the DNA collection program, or could be persuaded to create public oversight of the program if it chose to, including simply making public the information KSTP sought in this proceeding. But as of this time, the legislature has not done so.

Conclusion

The order dismissing KSTP's Complaint alleging violations of the Minn. Stat. § 13.03 by the BCA and the DOC was not the result of clear material error. The Petition for Reconsideration is denied.

R. R. K.

⁵ Minn. Stat. § 299C.155, subd. 4 (2010).